

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**May 13, 2020**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

STEPHANIE R.,<sup>1</sup>

Plaintiff,

v.

ANDREW M. SAUL, the Commissioner  
of Social Security,<sup>2</sup>

Defendant.

No. 4: 19-CV-5053-EFS

**ORDER DENYING PLAINTIFF'S  
SUMMARY-JUDGMENT MOTION  
AND GRANTING DEFENDANT'S  
SUMMARY-JUDGMENT MOTION**

Before the Court are the parties' cross summary-judgment motions.<sup>3</sup>

Plaintiff Stephanie R. appeals the denial of benefits by the Administrative Law  
Judge (ALJ). She alleges the ALJ erred by 1) improperly weighing the medical

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<sup>1</sup> To protect the privacy of the social-security Plaintiff, the Court refers to her by  
first name and last initial or by "Plaintiff." *See* LCivR 5.2(c).

<sup>2</sup> Because Andrew Saul is the Commissioner of the Social Security Administration,  
the Court substitutes him as the Defendant. *See* Fed. R. Civ. P. 25(d).

<sup>3</sup> ECF Nos. 11 & 13.

1 opinions; 2) discounting Plaintiff's symptom reports; 3) improperly determining  
 2 that the impairments did not meet or equal a listed impairment; and 4) improperly  
 3 assessing Plaintiff's residual functional capacity and therefore relying on an  
 4 incomplete hypothetical at step five. In contrast, Defendant Commissioner of Social  
 5 Security asks the Court to affirm the ALJ's decision finding Plaintiff not disabled.  
 6 After reviewing the record and relevant authority, the Court denies Plaintiff's  
 7 Motion for Summary Judgment, ECF No. 11, and grants the Commissioner's  
 8 Motion for Summary Judgment, ECF No. 13.

### 9 **I. Five-Step Disability Determination**

10 A five-step sequential evaluation process is used to determine whether an  
 11 adult claimant is disabled.<sup>4</sup> Step one assesses whether the claimant is currently  
 12 engaged in substantial gainful activity.<sup>5</sup> If the claimant is engaged in substantial  
 13 gainful activity, benefits are denied.<sup>6</sup> If not, the disability-evaluation proceeds to  
 14 step two.<sup>7</sup>

15 Step two assesses whether the claimant has a medically severe impairment,  
 16 or combination of impairments, which significantly limits the claimant's physical  
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 19 <sup>4</sup> 20 C.F.R. §§ 404.1520(a), 416.920(a).

20 <sup>5</sup> *Id.* §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).

21 <sup>6</sup> *Id.* §§ 404.1520(b), 416.920(b).

22 <sup>7</sup> *Id.* §§ 404.1520(b), 416.920(b).

1 or mental ability to do basic work activities.<sup>8</sup> If the claimant does not, benefits are  
2 denied.<sup>9</sup> If the claimant does, the disability-evaluation proceeds to step three.<sup>10</sup>

3 Step three compares the claimant's impairment(s) to several recognized by  
4 the Commissioner to be so severe as to preclude substantial gainful activity.<sup>11</sup> If an  
5 impairment meets or equals one of the listed impairments, the claimant is  
6 conclusively presumed to be disabled.<sup>12</sup> If an impairment does not, the disability-  
7 evaluation proceeds to step four.

8 Step four assesses whether an impairment prevents the claimant from  
9 performing work she performed in the past by determining the claimant's residual  
10 functional capacity (RFC).<sup>13</sup> If the claimant is able to perform prior work, benefits  
11 are denied.<sup>14</sup> If the claimant cannot perform prior work, the disability-evaluation  
12 proceeds to step five.

13 Step five, the final step, assesses whether the claimant can perform other  
14 substantial gainful work—work that exists in significant numbers in the national  
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16 <sup>8</sup> 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

17 <sup>9</sup> *Id.* §§ 404.1520(c), 416.920(c).

18 <sup>10</sup> *Id.* §§ 404.1520(c), 416.920(c).

19 <sup>11</sup> *Id.* §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii).

20 <sup>12</sup> *Id.* §§ 404.1520(d), 416.920(d).

21 <sup>13</sup> *Id.* §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).

22 <sup>14</sup> *Id.* §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).

economy—in light of the claimant’s RFC, age, education, and work experience.<sup>15</sup> If so, benefits are denied. If not, benefits are granted.<sup>16</sup>

The claimant has the initial burden of establishing entitlement to disability benefits under steps one through four.<sup>17</sup> At step five, the burden shifts to the Commissioner to show that the claimant is not entitled to benefits.<sup>18</sup>

## II. Factual and Procedural Summary

Plaintiff filed Title II and XVI applications, alleging a disability onset date of June 1, 2014.<sup>19</sup> Plaintiff meets the insured status requirements through March 31, 2017.<sup>20</sup> Her claim was denied initially and upon reconsideration.<sup>21</sup> A telephonic administrative hearing was held before Administrative Law Judge R.J. Payne.<sup>22</sup>

In denying Plaintiff’s disability claims, the ALJ made the following findings:

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<sup>15</sup> 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Kail v. Heckler*, 722 F.2d 1496, 1497-98 (9th Cir. 1984).

<sup>16</sup> 20 C.F.R. §§ 404.1520(g), 416.920(g).

<sup>17</sup> *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007).

<sup>18</sup> *Id.*

<sup>19</sup> AR 107.

<sup>20</sup> AR 17.

<sup>21</sup> AR 159 & 167.

<sup>22</sup> AR 41-104.

- 1           • Step one: Plaintiff had not engaged in substantial gainful activity
- 2           since June 1, 2014, the alleged onset date;
- 3           • Step two: Plaintiff had the following medically determinable severe
- 4           impairments: diabetes, hypertension, obesity, major depressive
- 5           disorder, social phobia, generalized anxiety disorder versus
- 6           unspecified anxiety, and a history of benzodiazepine abuse and alcohol
- 7           dependence;
- 8           • Step three: Plaintiff did not have an impairment or combination of
- 9           impairments that met or medically equaled the severity of one of the
- 10          listed impairments;
- 11          • RFC: Plaintiff had the RFC to:

12           Perform a wide range of sedentary work as defined in 20 CFR  
13           404.1567(a) and 416.9679(a). Exertionally, [Plaintiff] can lift  
14           no more than 20 pounds at a time occasionally but can lift or  
15           carry 10 pounds at a time frequently; can sit for six hours;  
16           and can stand and/or walk for four hours total in any  
17           combination in an eight-hour workday with normal breaks.  
18           Non-exertionally, [Plaintiff] can engage in frequent stooping;  
19           occasional crouching, kneeling, and crawling; frequent  
20           climbing of ramps and stairs; no climbing of scaffolds; and  
21           occasional climbing of ladders of five steps or less, consistent  
22           with a step or partial ladder. Environmentally, [Plaintiff]  
23           should avoid concentrated exposure to marked temperature  
          extremes of heat and cold, cannot work at unprotected  
          heights, and can only frequently work around hazardous  
          moving machinery. In addition, [Plaintiff] has mental  
          limitations in that she can have only occasional contact with  
          the general public can only occasionally work with or in the  
          vicinity of coworkers but not in a teamwork-type work setting;  
          can handle only occasional normal supervision, that is, no  
          over-the-shoulder or confrontational-type of supervision;  
          would do best in a routine work setting with little or no  
          changes; can have no fast-paced or strict production quota-

1 type work; and cannot be in a work environment where  
2 alcohol is sold.

- 3 • Step four: Plaintiff was not capable of performing past relevant work;  
4 and
- 5 • Step five: considering Plaintiff's RFC, age, education, and work  
6 history, Plaintiff was capable of performing work that existed in  
7 significant numbers in the national economy, such as toy stuffer,  
8 merchandise marker, leather laminator, and parking lot attendant.<sup>23</sup>

9 When assessing the medical-opinion evidence, the ALJ gave:

- 10 • great weight to the opinions of testifying experts Michael Lace, Psy.D.  
11 and Eliza Pierko, M.D., and examining psychologists NK Marks,  
12 Ph.D. and Luci Carstens, Ph.D.;
- 13 • significant weight to the opinion of state agency psychologist Jerry  
14 Gardner Ph.D.; and
- 15 • little weight to the opinions of Daniel Pitts, ARNP, PMHNP, Dr.  
16 Marks, Dr. Carstens, examining psychologist Manuel Gomes, Ph.D.,  
17 state agency medical consultant Robert Hander, M.D., and treating  
18 physician Jennifer Charron, M.D.

19 The ALJ also found that Plaintiff's medically determinable impairments  
20 could reasonably be expected to cause some of the alleged symptoms, but that her

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22 <sup>23</sup> AR 32-33.

1 statements concerning the intensity, persistence, and limiting effects of those  
2 symptoms were not entirely consistent with the medical evidence and other  
3 evidence in the record.<sup>24</sup>

4 Plaintiff requested review of the ALJ's decision by the Appeals Council,  
5 which denied review.<sup>25</sup> Plaintiff timely appealed to this Court.

### 6 **III. Standard of Review**

7 A district court's review of the Commissioner's final decision is limited.<sup>26</sup> The  
8 Commissioner's decision is set aside "only if it is not supported by substantial  
9 evidence or is based on legal error."<sup>27</sup> Substantial evidence is "more than a mere  
10 scintilla but less than a preponderance; it is such relevant evidence as a reasonable  
11 mind might accept as adequate to support a conclusion."<sup>28</sup> Moreover, because it is  
12 the role of the ALJ and not the Court to weigh conflicting evidence, the Court upholds  
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18 <sup>24</sup> AR 21.

19 <sup>25</sup> AR 1.

20 <sup>26</sup> 42 U.S.C. § 405(g).

21 <sup>27</sup> *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012).

22 <sup>28</sup> *Id.* at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997)).  
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1 the ALJ's findings "if they are supported by inferences reasonably drawn from the  
2 record."<sup>29</sup> The Court considers the entire record as a whole.<sup>30</sup>

3 Further, the Court may not reverse an ALJ decision due to a harmless error.<sup>31</sup>  
4 An error is harmless "where it is inconsequential to the [ALJ's] ultimate  
5 nondisability determination."<sup>32</sup> The party appealing the ALJ's decision generally  
6 bears the burden of establishing harm.<sup>33</sup>

#### 7 IV. Analysis

##### 8 A. Medical Opinions: Plaintiff fails to establish consequential error.

9 Plaintiff challenges the ALJ's assignment of little weight to Dr. Marks' and  
10 Dr. Carstens' marked limitations and also the opinions of Dr. Gomes and Mr. Pitts.  
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13 <sup>29</sup> *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

14 <sup>30</sup> *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The court "must  
15 consider the entire record as whole, weighing both the evidence that supports and  
16 the evidence that detracts from the Commissioner's conclusion," not simply the  
17 evidence cited by the ALJ or the parties.); *Black v. Apfel*, 143 F.3d 383, 386 (8th  
18 Cir. 1998) ("An ALJ's failure to cite specific evidence does not indicate that such  
19 evidence was not considered[.]").

20 <sup>31</sup> *Molina*, 674 F.3d at 1111.

21 <sup>32</sup> *Id.* at 1115 (quotation and citation omitted).

22 <sup>33</sup> *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).  
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1           The weighing of medical-source opinions is dependent upon the nature of the  
2 medical relationship, i.e., 1) a treating physician; 2) an examining physician who  
3 examines but did not treat the claimant; and 3) a reviewing physician who neither  
4 treated nor examined the claimant.<sup>34</sup> Generally, more weight is given to the  
5 opinion of a treating physician than to an examining physician's opinion and both  
6 treating and examining opinions are to be given more weight than the opinion of a  
7 reviewing physician.<sup>35</sup> When a treating physician's or evaluating physician's  
8 opinion is not contradicted by another physician, it may be rejected only for "clear  
9 and convincing" reasons, and when it is contradicted, it may not be rejected  
10 without "specific and legitimate reasons" supported by substantial evidence in the  
11 record.<sup>36</sup> A reviewing physician's opinion may be rejected for specific and legitimate  
12 reasons supported by substantial evidence, and the opinion of an "other" medical  
13 source may be rejected for specific and germane reasons supported by substantial  
14 evidence.<sup>37</sup> The opinion of a reviewing physician serves as substantial evidence if it  
15 is supported by other independent evidence in the record.<sup>38</sup>

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18 <sup>34</sup> *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014).

19 <sup>35</sup> *Id.*; *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995).

20 <sup>36</sup> *Lester*, 81 F.3d at 830.

21 <sup>37</sup> *Molina*, 674 F.3d at 1111; *Bruce v. Astrue*, 557 F.3d 1113, 1115 (9th Cir. 2009).

22 <sup>38</sup> *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

1 As discussed below, the Court finds Plaintiff fails to establish that the ALJ  
2 consequentially erred when weighing the medical opinions.

3 1. Dr. Marks and Dr. Carstens

4 On May 14, 2016, Dr. Marks performed a psychological evaluation of  
5 Plaintiff.<sup>39</sup> Dr. Marks diagnosed Plaintiff with posttraumatic stress disorder, social  
6 anxiety disorder (social phobia), and unspecified depressive disorder. Dr. Marks  
7 opined that Plaintiff had none or mild limitations in understanding, remembering,  
8 and persisting in tasks by following very short and simple instructions; performing  
9 routine tasks without special supervision; adapting to changes in a routine work  
10 setting; making simple work-related decisions; being aware of normal hazards and  
11 take appropriate precautions; and maintaining appropriate behavior in a work  
12 setting. Dr Marks also opined that Plaintiff was moderately limited in  
13 understanding, remembering, and persisting in tasks by follow detailed  
14 instructions; learning new tasks; and completing a normal workday and work week  
15 without interruptions from psychologically based symptoms. Dr. Marks further  
16 opined that Plaintiff had marked limitations performing activities within a  
17 schedule, maintaining regular attendance, and being punctual within customary  
18 tolerances without special supervision; asking simple questions or requesting  
19 assistance, communicating and performing effectively in a work setting; and  
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22 <sup>39</sup> AR 609-14.  
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1 setting realistic goals and planning independently.<sup>40</sup> Dr. Marks rated the overall  
2 severity of Plaintiff's limitations as moderate.

3 On May 31, 2016, Dr. Carsten reviewed Dr. Marks' psychological evaluation  
4 and opinion and concurred with Dr. Marks' opined limitations.<sup>41</sup>

5 The ALJ discounted Dr. Marks and Dr. Carsten's marked-limitation  
6 opinions because 1) they were inconsistent with the results of the mental status  
7 examination conducted at the time of Dr. Marks' psychological evaluation; 2) they  
8 were rendered for the purpose of determining eligibility for assistance from  
9 Washington State Department of Social and Health Services (DSHS); 3) such  
10 opinions are "usually substantially based on a claimant's self-reported symptoms  
11 and complaints"; and 4) they were completed by checked boxes with few objective  
12 findings in support of the degree of limitations.<sup>42</sup>

13 First, the ALJ found that Drs. Marks and Carsten's opinions regarding  
14 Plaintiff's marked limitations were inconsistent with those in Dr. Marks' mental  
15 status evaluation. Internally inconsistent opinions is a specific and legitimate  
16 reason to discount a doctor's opinion.<sup>43</sup> Dr. Marks' mental status evaluation  
17 revealed the following observations of Plaintiff: appearance well groomed; speech  
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19 <sup>40</sup> AR 612.

20 <sup>41</sup> AR 615-19.

21 <sup>42</sup> AR 29.

22 <sup>43</sup> See *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008).  
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1 well-organized and progressive; cooperative attitude and behavior; tearful during  
2 appointment; affect sad; thought process and content, orientation, perception,  
3 memory, concentration, and insight and judgment all within normal limits; and  
4 fund of knowledge and abstract thought outside normal limits. The ALJ rationally  
5 found that Dr. Marks' noted observations, which included both normal and fairly  
6 minimal observations, were inconsistent with Drs. Marks and Carsten's opined  
7 disabling limitations.

8         Second, the ALJ erred when it discredited Drs. Marks and Carsten's  
9 opinions because they were completed for the purpose of DSHS.<sup>44</sup> The purpose for  
10 which medical reports are obtained does not provide a legitimate basis for rejecting  
11 them.<sup>45</sup> An examining doctor's findings are entitled to no less weight when the  
12 examination is procured by the claimant than when it is obtained by the  
13 Commissioner.<sup>46</sup> The error, however, is harmless. As discussed, the ALJ cited other  
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19 <sup>44</sup> See *Godwin v. Colvin*, No. 2017 WL 343641, \*4 (E.D. Wash. Jan. 23, 2017) (citing  
20 *Lester v. Chater*, 81 F.3d 821, 832 (9th Cir. 1995)).

21 <sup>45</sup> *Lester*, 81 F.3d at 832.

22 <sup>46</sup> *Id.*  
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1 specific, legitimate reasons supported by substantial evidence which supports the  
2 ALJ's rejection of Dr. Marks and Dr. Carsten's opinions.<sup>47</sup>

3 Third, the ALJ discredited these opinions because they are "usually  
4 substantially based on a claimant's self-reported symptoms and complaints."<sup>48</sup> A  
5 physician's opinion may be rejected if it is based on a claimant's subjective  
6 complaints which were properly discounted.<sup>49</sup> However, when an opinion is not  
7 more heavily based on a patient's self-reports than on clinical observations, there is  
8 no evidentiary basis for rejecting the opinion.<sup>50</sup> Here, the ALJ made no specific  
9 finding that the medical sources relied on Plaintiff's self-reports, let alone a finding  
10 as to how heavily either doctor's opinion was based on Plaintiff's self-reporting.  
11 Instead, the ALJ only observed generally that DSHS opinions "although not  
12 always, such opinions are usually substantially based on a claimant's self-reported

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14 <sup>47</sup> *Reddick v. Chater*, 157 F.3d 715, 726 (9th Cir. 1998) (In the absence of other  
15 evidence undermining the credibility of a medical report, the purpose for which the  
16 report was obtained does not provide a legitimate basis for rejecting it.).

17 <sup>48</sup> AR 29.

18 <sup>49</sup> *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001); *Morgan v. Comm'r of*  
19 *Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999); *Fair v. Bowen*, 885 F.2d 597, 604  
20 (9th Cir. 1989).

21 <sup>50</sup> *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014); *Ryan v. Comm'r of Soc.*  
22 *Sec.*, 528 F.3d 1194, 1199-1200 (9th Cir. 2008).

1 symptoms and complaints.<sup>51</sup> Furthermore, Dr. Marks did rely on objective findings  
2 in forming her opinion. Dr. Marks conducted a mental status evaluation in support  
3 of her opinion. Even though the ALJ assigned little weight to the test results,  
4 absent a specific finding supported by substantial evidence that the medical  
5 sources relied on Plaintiff's self-reports in formulating their opinions, this reason  
6 was not a specific and legitimate reason to discredit the opinions. However, this  
7 error is harmless because the ALJ provided additional reasons for discounting Dr.  
8 Marks and Dr. Carsten's opinions that were specific, legitimate, and supported by  
9 substantial evidence.

10 Lastly, the ALJ discounted Dr. Marks and Dr. Carsten's marked limitation  
11 opinions when it found that Dr. Marks' check-box opinion contained few objective  
12 findings in support of the degree of limitations opined. An ALJ may permissibly  
13 reject check-box reports that do not contain any explanation of the bases for their  
14 conclusions.<sup>52</sup> Here, Dr. Marks' report is presented in check-box format without  
15 further explanation and, as explained above, Dr. Marks' mental status evaluation  
16 was inconsistent with her opined marked limitations. Accordingly, this was a  
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21 <sup>51</sup> AR 29.

22 <sup>52</sup> *Garrison*, 759 F.3d at 1014 n.17.  
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1 specific and legitimate reason to reject Dr. Marks and Dr. Carsten's opined  
2 limitations.<sup>53</sup>

3 Plaintiff fails to establish the ALJ consequentially erred by discounting Dr.  
4 Marks and Dr. Carsten's marked limitations opinion.

5 2. Dr. Gomes

6 On August 30, 2015, Dr. Gomes conducted a psychological evaluation of  
7 Plaintiff. Dr. Gomes diagnosed Plaintiff with generalized anxiety disorder; major  
8 depressive disorder, severe; other specified trauma and stress related disorder;  
9 alcohol use disorder, moderate (binge drinking); personal past history of sexual  
10 abuse in child hood; personal history of self-harm; obesity; hypertension (self-  
11 report); and diabetes mellitus, type II. Dr. Gomes opined that Plaintiff will have  
12 difficulty learning new material; will not engage in conflict with authority, but will  
13 react with increased depression and anxiety to corrections; will not easily engage  
14 with those whom she is unfamiliar; will need additional, timely instruction; will  
15 have difficulty initially attending an unfamiliar workplace with unfamiliar people  
16 based on depression and anxiety; will not respond well to stress; and due to  
17 struggles with anxiety and depression would not respond to treatment quickly,  
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20 <sup>53</sup> *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996); *Bray*, 554 F.3d at 1228  
21 (recognizing that a medical opinion may be rejected if it is conclusory or inadequately  
22 supported).  
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1 such that she would have difficulties being able to complete a normal  
2 workday/workweek without interruptions from her psychiatric condition.<sup>54</sup>

3 Dr. Gomes' opinion was contradicted by the testifying psychologist expert  
4 opinion of Dr. Lace, who opined that Plaintiff be limited to occasional contact with  
5 the general public, coworkers, and supervisors (normal supervision); slow paced  
6 tasks due to anxiety; routine work setting with little or no changes because of  
7 anxiety; and could work in the vicinity of coworkers but not teamwork type  
8 settings.<sup>55</sup> Dr. Lace's opinion is supported by other independent evidence in the  
9 record, including socializing with peers and work history, and therefore it serves as  
10 substantial evidence.<sup>56</sup> Accordingly, the ALJ, who is tasked with weighing  
11 conflicting medical opinions, was required to provide specific and legitimate  
12 reasons supported by substantial evidence for discounting Dr. Gomes' opinion.  
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15 <sup>54</sup> AR 568-69.

16 <sup>55</sup> AR 55-58.

17 <sup>56</sup> *See Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995); *see also* AR 441, 445  
18 (plaintiff social with select peers throughout shift and watched movie in common  
19 area with peers); AR 443 (reported feeling worse, has not been able to self-medicate  
20 with alcohol/benzos); AR 565 (ability to maintain work schedule in the past); AR 610  
21 (worked at Jack in the Box with family and friends and became a shift leader until  
22 began having panic attacks).  
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1 The ALJ discounted Dr. Gomes' opinion because it was 1) inconsistent with  
2 the testimony and opinion of Dr. Lace who reviewed the entire longitudinal record;  
3 2) based in part on diagnosis of trauma and stress-related disorders while Dr. Lace  
4 testified the disorders were not firmly established as severe; 3) inconsistent with  
5 the May 2016 DSHS psychological evaluation; 4) inconsistent with Dr. Gomes' own  
6 mental status examination; 5) inconsistent with activities in the longitudinal  
7 record; and 6) based on Plaintiff's subjective complaints without objective support.

8 First, an ALJ may give more weight to an opinion that is based on more  
9 record reviewed and supporting evidence.<sup>57</sup> Here Dr. Lace reviewed the entire  
10 administrative record, including Dr. Gomes' report, while Dr. Gomes reviewed the  
11 May 6, 2013 medical notes, November 10, 2014 hospitalization discharge summary,  
12 and November 1, 2014 emergency department medical notes. That Dr. Lace was  
13 more familiar with Plaintiff's longitudinal case record was a legitimate and specific  
14 reason to give more weight to Dr. Lace's opinion than to Dr. Gomes' opinion.  
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17 <sup>57</sup> See 20 C.F.R. § 404.1527(c)(6) (specifying that the extent to which a medical source  
18 is "familiar with the other information in [the claimant's] case record" is relevant in  
19 assessing the weight to give that opinion); *Lingenfelter*, 504 F.3d at 1042 (recognizing  
20 that the ALJ is to consider the consistency of the medical opinion with the record as  
21 a whole and assess the amount of relevant evidence that supports the opinion);  
22 *Andrews*, 53 F.3d at 1041 (same).  
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1           Second, the ALJ discounting Dr. Gomes' opinion because it was based in part  
2 on diagnosed trauma and stress-related disorders that expert Dr. Lace testified  
3 were not established as severe is a rational finding supported by substantial  
4 evidence.<sup>58</sup> As explained above, Dr. Lace, after reviewing the entire administrative  
5 record, opined that PTSD would not be established, and if it was established it  
6 would be non-severe, while Dr. Gomes based his prognosis in part on symptoms of  
7 PTSD based on multiple childhood experiences.<sup>59</sup> Discounting Dr. Gomes' opinion  
8 because it was based on contradicting evidence as opined by Dr. Lace, was a  
9 legitimate reason to discount Dr. Gomes' opinion.

10           Third, the ALJ finding that Dr. Gomes' opinion was inconsistent with Dr.  
11 Marks' May 2016 DSHS psychological evaluation is a rational finding supported by  
12 substantial evidence. An ALJ is not obliged to credit medical opinions that are  
13 contradicted by the opinions of other examining medical sources.<sup>60</sup> Here, the ALJ  
14 gave great weight to Dr. Marks' moderate limitations involving understanding  
15 remembering and persisting in tasks, learning new tasks, and completing a normal  
16 workday and work week, while Dr. Gomes opined Plaintiff would have difficulties  
17 learning new materials, and completing a normal workday/workweek without  
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20 <sup>58</sup> *Id.*

21 <sup>59</sup> AR 54 & 568.

22 <sup>60</sup> *Tommasetti*, 533 F.3d at 1041  
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1 interruptions from psychiatric condition.<sup>61</sup> The ALJ rationally found that Dr.  
2 Gomes' opined limitations were inconsistent with Dr. Marks' opined moderate  
3 limitations and that Dr. Marks' opined moderate limitations were more consistent  
4 with the longitudinal record.

5 Fourth, the ALJ found that Dr. Gomes' opinion regarding Plaintiff's  
6 limitations was inconsistent with his mental status examination. Internally  
7 inconsistent opinions is a specific and legitimate reason to discount a doctor's  
8 opinion.<sup>62</sup> As explained above, Dr. Gomes' mental status examination revealed  
9 Plaintiff appeared well organized with progressive speech, a cooperative attitude  
10 and behavior; with normal thought process and content, orientation, perception,  
11 memory, and concentration; and responded with humor and held good eye contact  
12 throughout examination.<sup>63</sup> The ALJ rationally found that Dr. Gomes' noted normal  
13 observations were inconsistent with his disabling limitations.

14 Fifth, the ALJ found Dr. Gomes' opinion inconsistent with Plaintiff's  
15 activities in the longitudinal record. An ALJ may discount a medical source opinion  
16 to the extent it conflicts with the claimant's daily activities.<sup>64</sup> Here, the ALJ  
17 highlighted that Plaintiff cared for two foster children until she reported ceasing  
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19 <sup>61</sup> AR 569 & 613-14.

20 <sup>62</sup> *See Tommasetti*, 533 F.3d at 1041.

21 <sup>63</sup> AR 566-69.

22 <sup>64</sup> *Morgan*, 169 F.3d at 601-02.

1 foster care due to panic attacks, her aunt's children, and her twelve-year-old sister;  
2 washes dishes, does laundry, and cleans her room on a weekly basis; and  
3 vacationed in California.<sup>65</sup> On this record, the nature and quality of the activities  
4 cited by the ALJ as inconsistent with Dr. Gomes' opinion do not constitute a  
5 legitimate reason to discount Dr. Gomes' opinion because the ALJ failed to  
6 meaningfully articulate how the nature and quality of the activities are  
7 inconsistent with sustaining full-time work. Yet, any error by the ALJ in relying on  
8 Plaintiff's daily activities as a basis to discount Dr. Gomes' opinion is harmless  
9 because the ALJ provided other specific and legitimate reasons, supported by  
10 substantial evidence, to discount Dr. Gomes' opinion.<sup>66</sup>

11 Sixth, the ALJ discounting Dr. Gomes' opinion because the opinion was  
12 based on Plaintiff's subjective complaints and not supported by objective medical  
13 evidence is a rational finding supported by substantial evidence. "A physician's  
14 opinion . . . premised to a large extent upon the claimant's own accounts of his  
15 symptoms and limitations may be disregarded where those complaints have been  
16 properly discounted."<sup>67</sup> Because, as explained below, the ALJ properly discounted  
17 Plaintiff's reported symptoms because they were inconsistent with the objective  
18 medical evidence and longitudinal medical record, the ALJ also properly rejected  
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20 <sup>65</sup> See *e.g.*, AR 25, 281 & 572.

21 <sup>66</sup> See *Molina*, 674 F.3d at 1115.

22 <sup>67</sup> *Morgan*, 169 F.3d at 602 (internal quotation marks omitted).  
23

1 the findings of Dr. Gomes to the extent they were based on Plaintiff's subjective  
2 complaints.<sup>68</sup>

3 Plaintiff fails to establish that the ALJ consequentially erred by discounting  
4 Dr. Gomes' opinion.

5 3. Mr. Pitts

6 On September 20, 2016, nurse practitioner, Daniel Pitts, completed a mental  
7 residual functional capacity assessment. Mr. Pitts opined that Plaintiff had  
8 moderate limitations in understanding and remembering very short and simple  
9 instructions; carrying out very short simple instructions; sustaining an ordinary  
10 routine without special supervision; working in coordination with or proximity to  
11 others without being distracted by them; making simple work-related decisions;  
12 interacting appropriately with the general public; asking simple questions or  
13 requesting assistance; getting along with co-workers or peers without distracting  
14 them; maintaining socially appropriate behavior; adhering to basic standards of  
15 neatness and cleanliness; being aware of normal hazards and taking appropriate  
16 precautions; and setting realistic goals or making plans independently of others.

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18 <sup>68</sup> See *Bray*, 554 F.3d at 1228 (ALJ properly may discount physician's opinion that is  
19 based solely upon claimant's self-reporting if ALJ concludes claimant's self-reporting  
20 is not credible); *Tonapetyan*, 242 F.3d at 1149 (medical opinion premised on  
21 subjective complaints may be disregarded where record supports ALJ in discounting  
22 claimant's reported symptoms).

1 Mr. Pitts also opined Plaintiff had marked limitations in remembering locations  
2 and work-like procedures; understanding and remembering detailed instructions;  
3 carrying out detailed instructions; maintaining attention and concentration for  
4 extended periods' performing activities within a schedule, maintaining regular  
5 attendance and being functional within customary tolerances; accepting  
6 instructions and responding appropriately to criticism from supervisors; and  
7 responding appropriately to changes in the work setting. Mr. Pitts also opined that  
8 Plaintiff had severe limitations in terms of her ability to complete a normal work-  
9 day and workweek without interruptions from psychologically based symptoms, to  
10 perform at a consistent pace without an unreasonable number and length of rest  
11 periods, and travel in unfamiliar places or use public transportation. Mr. Pitts  
12 further opined that Plaintiff had marked limitations in terms of maintaining social  
13 functioning and concentration, persistence, or pace and that Plaintiff met the  
14 criteria of the mental listings. Lastly, Mr. Pitts opined that based on the  
15 cumulative limitations, Plaintiff is likely to be off task for over thirty percent of the  
16 time during a forty-hour work week and miss four or more days per month when  
17 attempting to work a forty-hour work schedule.<sup>69</sup>

18 The ALJ discounted Mr. Pitts' opinion because 1) issues of disability are  
19 reserved to the Commissioner; 2) it was inconsistent with Mr. Pitts' objective  
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22 <sup>69</sup> AR 812-15.  
23

1 findings, which support Dr. Lace's testimony; and 3) inconsistent with the 2016  
2 DSHS evaluation and October 2015 psychological evaluation.

3 First, the ALJ discounted Mr. Pitts' opinion because the issue of disability is  
4 reserved to the Commissioner. Opinions on the ultimate issue of disability are an  
5 issue reserved to the Commissioner.<sup>70</sup> That Mr. Pitts opined Plaintiff had  
6 "disabling anxiety" is a germane reason to discount Mr. Pitt's opinions, so long as  
7 the ALJ considered the substance of Mr. Pitt's evaluation, which the ALJ did as is  
8 discussed below.<sup>71</sup>

9 Second, the ALJ noted Mr. Pitts' opinion was internally inconsistent. An  
10 ALJ may reject opinions that are internally inconsistent. Although Mr. Pitts noted  
11 that Plaintiff consistently arrived on time to appointments, not having any notable  
12 psychomotor agitation, and presenting as calm, cooperative, and pleasant, with  
13 some mood abnormalities and fair insight and judgment and the ability to  
14 maintain eye contact, he then imposed marked limitations in social functioning and  
15 concentration, persistence, or pace, and severe limitations in completing a  
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19 <sup>70</sup> 20 C.F.R. § 404.1527(c); *see also Wickramasekera v. Astrue*, No. CV 09-449-TUC-  
20 HCE, 2010 WL 3883241, at \*34 (D. Ariz. Sept. 29, 2010) (applying regulation to lay  
21 witness testimony).

22 <sup>71</sup> AR 815.  
23

1 workday/workweek without interruptions.<sup>72</sup> These internal inconsistencies are a  
2 germane reason to discount Mr. Pitts' opinion.

3 Lastly, the ALJ discounted Mr. Pitts' opinion because it was inconsistent  
4 with the evaluation in October 2015 and the May 2016 DSHS evaluation.  
5 Inconsistency with the medical evidence is a germane reason for rejecting lay  
6 witness testimony.<sup>73</sup> As discussed above, Mr. Pitts opined Plaintiff was markedly  
7 limited in understanding, remembering and carrying out detailed instructions,  
8 while the May 2016 DSHS evaluation opined only a moderate limitation in  
9 Plaintiff's ability to understand, remember, and persist in learning new tasks.<sup>74</sup>  
10 Inconsistency with the medical evidence was a germane reason to discount Mr.  
11 Pitts' opinion.

12 Plaintiff fails to establish that the ALJ erred by discounting Mr. Pitts'  
13 opinion.

14 **B. Step Three (Listings): Plaintiff fails to establish error.**

15 Plaintiff contends the ALJ erred by finding that Plaintiff's impairments did  
16 not meet Listings 12.04, 12.06, and 12.15 singly, or in combination. The listings  
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18 <sup>72</sup> AR 575, 589, 598, & 812-13.

19 <sup>73</sup> See *Bayliss*, 427 F.3d at 1218; *Lewis v. Apfel*, 236 F.3d 503, 511-12 (9th Cir. 2001)  
20 (germane reasons include inconsistency with medical evidence, activities, and  
21 reports).

22 <sup>74</sup> AR 609-14.



1 findings by the ALJ must be read in conjunction with the entire ALJ decision.<sup>75</sup>  
2 Here, the ALJ discussed the medical records and medical opinions related to  
3 Plaintiff's mental impairments at great length. The ALJ's analysis in its entirety  
4 as to Plaintiff's mental-health impairments permits the Court to meaningfully  
5 review the ALJ's finding that Plaintiff's mental impairments did not satisfy the  
6 listings paragraph C criteria. Plaintiff's argument is based entirely on her initial  
7 argument that the ALJ erred in considering the medical-opinion evidence. For the  
8 above-explained reasons, the ALJ's consideration of the medical-opinion evidence  
9 was legally sufficient and supported by substantial evidence.

10 The ALJ's finding that Plaintiff did not meet or medically equal any listing  
11 is rational and supported by substantial evidence

12 **C. Plaintiff's Symptom Reports: Plaintiff fails to establish**  
13 **consequential error.**

14 Plaintiff argues the ALJ failed to provide valid reasons for rejecting her  
15 symptom reports. When examining a claimant's symptom reports, the ALJ must  
16 make a two-step inquiry. "First, the ALJ must determine whether there is objective  
17 medical evidence of an underlying impairment which could reasonably be expected  
18 to produce the pain or other symptoms alleged."<sup>76</sup> Second, "[i]f the claimant meets  
19 the first test and there is no evidence of malingering, the ALJ can only reject the  
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21 <sup>75</sup> SSR 17-2p.

22 <sup>76</sup> *Molina*, 674 F.3d at 1112.  
23

1 claimant's testimony about the severity of the symptoms if [the ALJ] gives 'specific,  
2 clear and convincing reasons' for the rejection."<sup>77</sup> Here, the ALJ found Plaintiff's  
3 statements concerning the intensity, persistence, and limiting effects of her  
4 symptoms inconsistent with the medical signs and laboratory findings of record.<sup>78</sup>

5 Plaintiff only challenges the legal standard used, that the objective medical  
6 evidence was inconsistent with Plaintiff's symptom complaints, and that Plaintiff's  
7 daily activities contradict her disabling symptoms.<sup>79</sup> Plaintiff failed to challenge the  
8 other reasons the ALJ cited in support of its finding that Plaintiff's symptom  
9 complaints were not entirely credible, thus, any challenges are waived and the Court  
10 may decline to review them.<sup>80</sup> However, upon review, the Court finds that the ALJ  
11 provided specific, clear, and convincing reasons, supported by substantial evidence,  
12 to support its finding.

13 As to the legal standard used by the ALJ, Plaintiff argues the ALJ used the  
14 wrong legal standard when it "misapprehended Plaintiff's allegations . . . that she  
15 cannot maintain employment on a regular, continuing basis, rather than that she  
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18 <sup>77</sup> *Ghanim v. Colvin*, 763 F.3d at 1163 (quoting *Lingenfelter*, 504 F.3d at 1036).

19 <sup>78</sup> AR 22.

20 <sup>79</sup> ECF No. 11 at 17-20 (citing SSR 96-8p (assessing RFC in initial claims)).

21 <sup>80</sup> See *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir.  
22 2008).

1 is incapable of all work activity.”<sup>81</sup> However, the ALJ only need to give “specific,  
2 clear and convincing reasons” for the rejection,” as it did.<sup>82</sup>

3 The ALJ discounted Plaintiff’s symptom reports because they were  
4 inconsistent with the objective medical evidence. Symptom reports cannot be solely  
5 discounted on the grounds that they were not fully corroborated by the objective  
6 medical evidence.<sup>83</sup> However, medical evidence is a relevant factor in considering  
7 the severity of the reported symptoms. <sup>84</sup> As discussed above, Plaintiff presented,  
8 during the course of treatment, as calm, cooperative, pleasant, well oriented, with  
9 fair insight and judgment, good eye contact, speech rate and rhythm, and thought  
10 process and content, orientation, perception, memory, and concentration within  
11 normal limits, all in contrast to Plaintiff’s reported disabling symptoms. This was a  
12 relevant factor for the ALJ to consider.

13 The ALJ also discounted Plaintiff’s symptom reports because they were  
14 inconsistent with improvement once Plaintiff began treatment. The effectiveness of  
15 treatment is a relevant factor in determining the severity of a claimant’s  
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19 <sup>81</sup> ECF No. 11 at 18.

20 <sup>82</sup> *Ghanim*, 763 F.3d at 1163 (quoting *Lingenfelter*, 504 F.3d at 1036).

21 <sup>83</sup> *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

22 <sup>84</sup> *Id.*

1 symptoms.<sup>85</sup> Here, the ALJ noted Plaintiff had normal mood and affect at times  
2 when her anxiety and depression were stable, abstained from alcohol, and  
3 continued to take her medications as prescribed.<sup>86</sup> This finding is supported by  
4 substantial evidence and was a clear and convincing reason to discount Plaintiff's  
5 symptom complaints.

6 The ALJ also discounted Plaintiff's symptom reports because they were  
7 inconsistent with her activities of daily living.<sup>87</sup> If a claimant can spend a  
8 substantial part of the day engaged in pursuits involving the performance of  
9 exertional or non-exertional functions, the ALJ may find these activities  
10 inconsistent with the reported disabling symptoms.<sup>88</sup> As previously described, the  
11 ALJ highlighted that Plaintiff cared for two foster children, her aunt's children,  
12 and her twelve-year-old sister; washes dishes, does laundry, and cleans her room  
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14 <sup>85</sup> 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3) (2011); *Warre v. Comm'r of Soc. Sec.*  
15 *Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006) (determining that conditions effectively  
16 controlled with medication are not disabling for purposes of determining eligibility  
17 for benefits); *Tommasetti v. Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008) (recognizing  
18 that a favorable response to treatment can undermine a claimant's complaints of  
19 debilitating pain or other severe limitations).

20 <sup>86</sup> See e.g., AR 669-72, 686-87 & 836-37.

21 <sup>87</sup> AR 24.

22 <sup>88</sup> *Molina*, 674 F.3d at 1113.  
23

1 on a weekly basis; and vacationed in California.<sup>89</sup> In order for Plaintiff's cited  
2 activities to be deemed activities of daily living constituting a clear and convincing  
3 reason to discount Plaintiff's symptoms, the ALJ needed to have more  
4 meaningfully articulated this finding. These cited activities, which can be achieved  
5 with relatively limited interaction with strangers and not on an everyday basis, do  
6 not "contradict claims of a totally debilitating impairment."<sup>90</sup> However, the ALJ  
7 articulated other supported grounds for discounting Plaintiff's reported  
8 symptoms—that they were inconsistent with the objective medical evidence and  
9 inconsistent with improvement observed with continued treatment—thus, the  
10 ALJ's decision to discount Plaintiff's reported symptoms is upheld on this record.

11 Plaintiff can identify some evidence in the record that shows abnormal  
12 mental health observations.<sup>91</sup> However, in reviewing a denial of benefits, a district  
13 court may not substitute its judgment for that of the Commissioner.<sup>92</sup> If the  
14 evidence in the record "is susceptible to more than one rational interpretation, [the  
15 court] must uphold the ALJ's findings if they are supported by inferences  
16 reasonably draw from the record."<sup>93</sup> Even if Plaintiff can identify evidence that can

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18 <sup>89</sup> AR 25, 281, 572, 831, 834.

19 <sup>90</sup> *Molina*, 674 F.3d at 1112-13.

20 <sup>91</sup> ECF No. 14 at 9 (observations of tearfulness, anxiety, and suicidal ideations).

21 <sup>92</sup> *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

22 <sup>93</sup> *Molina*, 674 F.3d at 1111.

1 be interpreted more favorably to Plaintiff's position, the evidence is susceptible to  
 2 more than one rational interpretation, and therefore the ALJ's ultimate conclusion  
 3 must be upheld.<sup>94</sup>

4 In summary, Plaintiff fails to establish the ALJ erred by discounting  
 5 Plaintiff's symptom reports.

6 **D. Step Five: Plaintiff fails to establish error.**

7 Plaintiff argues that the ALJ's hypothetical failed to account for the  
 8 limitations set forth by her providers. However, this argument merely restates  
 9 Plaintiff's earlier allegations of error, which are not supported by the record.  
 10 Accordingly, the ALJ's hypothetical properly accounted for the limitations  
 11 supported by the record.<sup>95</sup>

12 **V. Conclusion**

13 Accordingly, **IT IS HEREBY ORDERED:**

- 14 1. Plaintiff's Motion for Summary Judgment, **ECF No. 11**, is **DENIED**.
- 15 2. The Commissioner's Motion for Summary Judgment, **ECF No. 13**, is  
 16 **GRANTED**.
- 17 3. The Clerk's Office shall enter **JUDGMENT** in favor of Defendant.
- 18 4. The case shall be **CLOSED**.

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 20 <sup>94</sup> See *Burch*, 400 F.3d at 679.

21 <sup>95</sup> See *Magallanes*, 881 F.2d at 756–57 (holding it is proper for the ALJ to limit a  
 22 hypothetical to those restrictions supported by substantial evidence in the record).  
 23

**DATED** this 13<sup>th</sup> day of May 2020.

EDWARD F. SHEA  
Senior United States District Judge

ORDER RULING ON CROSS SUMMARY-JUDGMENT MOTIONS - 31